



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 13880763

Date: SEP. 15, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, who describes herself as a communications expert, seeks second preference immigrant classification as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not establish that she is an individual of exceptional ability. The Director also concluded that the Petitioner did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The Petitioner filed a combined motion to reopen and motion to reconsider.

The Director's two-page motion decision consists of a brief summary of the case's procedural history; a quotation of 8 C.F.R. § 103.5(a) regarding the requirements of a motion to reopen and of a motion to reconsider, respectively; a conclusion that the combined motion filing "satisfies the regulatory requirements for filing a motion to reopen and/or reconsider," without clarifying whether the filing satisfied the requirements of a motion to reopen, or a motion to reconsider, or both; a two-sentence paragraph regarding the substance of the motion; and a boilerplate paragraph advising the Petitioner that she may file another motion or an appeal.

The extent of the Director's two-sentence paragraph regarding the substance of the motion is as follows:

After additional review of the record of proceeding, including your motion, [U.S. Citizenship and Immigration Services (USCIS)] has determined that you have not established eligibility for the requested benefit. Further, you have failed to establish that the decision was incorrect based on the evidence of record at the time of the initial decision.¹

¹ The latter sentence refers to the requirements of a motion to reconsider at 8 C.F.R. § 103.5(a)(3); however, such a requirement does not apply for a motion to reopen, which specifically addresses "new facts to be provided in the reopened proceeding." 8 C.F.R. § 103.5(a)(2).

While we conduct *de novo* review on appeal, we conclude that a remand is warranted in this case because the Director's motion decision is insufficient for review. When a USCIS officer denies an application or petition under 8 C.F.R. § 103.2—including entering a decision on a motion or appeal filed on a Form I-290B, Notice of Appeal or Motion—the officer “shall explain in writing the specific reasons for denial.” 8 C.F.R. § 103.3(a)(1)(i); *see also* 8 C.F.R. § 103.2(b)(15) (incorporating by reference 8 C.F.R. § 103.5); 8 C.F.R. § 103.5(a)(1)(iii) (specifying that motions must be filed on Form I-290B). The Director's statements that the Petitioner “[had] not established eligibility for the requested benefit [and] failed to establish that the decision was incorrect based on the evidence of record at the time of the initial decision” does not sufficiently explain in writing the specific reasons for the unfavorable decision.

Accordingly, the matter will be remanded to the Director to conduct a final merits determination of the combined motion and enter a new decision. The Director may request any additional evidence considered pertinent to the new determination and any other issue. As such, we express no opinion regarding the ultimate resolution of this case on remand.

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing analysis and entry of a new decision.